



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MLL/172389

PRELIMINARY RECITALS

Pursuant to a petition filed February 26, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Waushara County Human Services in regard to Medical Assistance (MA), a hearing was held on April 19, 2016, at Wautoma, Wisconsin.

The issue for determination is whether the legal requirements for imposition of a Medicaid lien have been met.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Waushara County Human Services
213 W. Park Street
PO Box 1230
Wautoma, WI 54982-1230

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waushara County.

2. Petitioner filed this appeal to contest a notice that a lien will be placed on real estate owned by Petitioner. She hopes to sell the home and use the proceeds to buy another home in a different part of the State where there are better resources for home care than available in her area.
3. Petitioner was admitted to a nursing home, [REDACTED], on July 31, 2014. She continues to reside there.
4. Petitioner and her husband jointly owned a home and adjacent lot in [REDACTED]. He had been living there. They were legally divorced on January 19, 2016 and he moved from the home. It was listed for sale.
5. Petitioner is unable to return to the home.
6. Petitioner was sent a Medicaid Notice of Intent to File a Lien dated February 11, 2016 on the property referred to at Finding # 4. She timely appealed.

DISCUSSION

There is a right to appeal the imposition of a lien but the issue for hearing is limited to determining whether statutory requirements have been met. The requirements are listed in the Wisconsin Statutes at §49.496(2) and the Medicaid Eligibility Handbook lists them:

22.1.4.7 Administrative Hearing: Liens

A member or his or her representative may request an administrative hearing if he or she feels the statutory requirements for imposing the **lien** have not been met. The IM agency attends the hearing to explain the decision to file the Notice of Intent to File a **Lien**. The only issue at the hearing will be whether the following requirements were satisfied:

1. The member has an ownership interest in a home.
2. The member resides in a nursing home or hospital.
3. The member cannot **reasonably** be expected to be discharged from the nursing home or hospital and return home to live.
4. None of the following lawfully reside in the home:
 - a. The member's spouse.
 - b. The member's child who is:
 - Under age 21, **or**
 - Disabled, **or**
 - Blind.
 - c. The member's sibling who has an ownership interest in the home and who has lived in the home continuously beginning at least 12 months before the member was admitted to the nursing home or hospital.

Medicaid Eligibility Handbook, §22.1.4.7.

The evidence presented here does show that the statutory requirements have been met. The Division of Hearings and Appeals cannot ignore them. I do note that if the person does return to the home the lien is released. *Wis. Stats. §49.496(2)(h)*.

CONCLUSIONS OF LAW

That the statutory standards for imposition of a Medicaid lien have been met.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 9th day of June, 2016

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 9, 2016.

Waushara County Human Services
Division of Health Care Access and Accountability